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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

FCT-SM, LLC,

Debtor.

Case No.: BK-S-23-12049-MKN

Chapter 11

Date: June 28, 2023

Time: 9:30 AM

APPLICATION TO EMPLOY ATTORNEYS

21st CENTURY COMMUNITIES, INC. (“21st Century”), FCT-MM, LLC (“MM”), and FCT-SM (“SM”) (collectively “Debtors”), hereby apply to the Court for an Order approving Debtors’ Application to Johnson & Gubler, PC. as attorneys as general bankruptcy counsel for Debtors effective as of the date of the Petition. This Application is brought pursuant to Section 327 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Section 2 of the guidelines of the U.S. Department of Justice of the United States Trustee – North and Eastern Districts of California and District of Nevada, (the “Guidelines”).

Background

1. On May 19, 2023, Debtors filed voluntary petitions commencing their voluntary cases

1 under Subchapter V of Chapter 11 of the Bankruptcy Code.

2 2. Contemporaneously with the filing of the voluntary petitions, Debtors filed an
3 application for an Order to Jointly Administer the Chapter 11 cases, with 21st Century denominated as
4 the lead case.

5 **Jurisdiction and Venue**

6 3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1134. This
7 is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A). Venue is appropriate over these cases in this
8 District pursuant to 28 U.S.C. §1408(1) and (2), in that 21st Century is a Nevada corporation with its
9 principal place of business in Clark County, Nevada. MM and SM are Tennessee limited liability
10 companies that are affiliates of 21st Century as defined under 11 U.S.C. §101(a)(A), and under 28
11 U.S.C. §1409(a).

12 4. Debtors continue to operate their business and/or financial affairs and manage their
13 property as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108.

14 5. No request has been made for the appointment of a trustee or examiner and no official
15 committees have been appointed in the Chapter 11 Cases.

16 6. Pursuant to Local Rule 9014.2, Debtors consent to the entry of final orders or judgments
17 by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties,
18 cannot enter final orders for judgment consistent with Article III of the United States Constitution.

19 **RELIEF REQUESTED**

20 Debtors seek court approval pursuant to Section 327(a) to employ and retain Johnson & Gubler,
21 P.C. as their attorneys in connection with the Chapter 11 cases, effective as of the petition date. Debtors
22 request that the Court approve the retention and compensation of Johnson & Gubler, P.C. as their
23 attorneys to perform the legal services that will be necessary during the Chapter 11 Cases in accordance
24 with Johnson & Gubler's normal hourly rates and normal reimbursement policies.

25 **JOHNSON & GUBLER'S RETENTION**

Debtors entered into an engagement agreement (“Engagement Agreement”) with Johnson & Gubler on or about May 15, 2023. A copy of the Engagement Agreement is attached as Exhibit 1. The Engagement Agreement allows for a retainer, and that the hourly rates may be adjusted from time to time.

I. GUIDELINES SECTION 2.1 – COMPLIANCE

Pursuant to Guidelines Section 2.1 and Bankruptcy Rule 2014, a copy of this Application for approval of employment of professional persons under 11 U.S.C. § 327 and Bankruptcy Rule 2014, the Verified Statement accompanying this Application and the form of the order (a copy of which is attached hereto as Exhibit 2) sought herein is being served on the United States Trustee contemporaneously with the filing of this Application with the Bankruptcy Court. A copy of the proposed Order is attached as Exhibit 3.

**II. PROFESSIONAL PERSONS TO BE EMPLOYED - STATEMENT RE:
DISINTERESTED PERSONS**

The Debtors wish to employ the law firm of JOHNSON & GUBLER, P.C. as counsel for the Debtors to represent and assist the Debtors in carrying out their duties under the Bankruptcy Code in the above-captioned proceeding. Bankruptcy Rule 2014(a). The legal work in this case will be performed primarily by Matthew L. Johnson, who is admitted to practice in this Court, and who is Board Certified in Business Bankruptcy Law by the American Board of Certification. Mr. Johnson has been engaged in Chapter 11 bankruptcy cases for over 25 years in the District of Nevada and is well qualified to represent the Debtors in these matters.

To the best knowledge of Applicant, said professional persons do not hold or represent an interest adverse to the above-captioned bankruptcy estate, and are disinterested persons. 11 U.S.C. §327(a). To the best of Applicant’s knowledge, no employee of Johnson & Gubler, LLC is related to a United States Bankruptcy Judge or any employee of the Office of the United States Trustee.

III. STATEMENT OF NECESSITY FOR EMPLOYMENT OF PROFESSIONAL

1 **PERSONS**

2 It is necessary for employment of professional persons for whom employment is sought by this
3 Application inasmuch as the Debtors require professional assistance in the areas, identified hereinafter,
4 where service is to be rendered in this case. Bankruptcy Rule 2014(a); Guidelines Section 2.1.1.

5 **IV. STATEMENT OF SCOPE OF PROFESSIONAL SERVICE TO BE RENDERED**

6 The scope of services to be rendered by said professional is as follows:

7 1. To institute, prosecute or defend any lawsuits, adversary proceedings and/or contested
8 matters arising out this bankruptcy proceeding in which the Debtors may be a party;

9 2. To assist in the recovery and obtaining necessary Court approval for recovery and
10 liquidation of estate assets, and to assist in the protecting and preserving the same where necessary;

11 3. To assist in determining the priorities and status of claims and filing objections thereto
12 where necessary;

13 4. To assist in preparation of a plan of reorganization and any associated documents;

14 5. To file any adversary proceedings or contested matters deemed advisable; and

15 6. To advise the Debtors and perform all other legal services for the Debtors which may
16 become necessary in this bankruptcy proceeding. Bankruptcy Rule 2014(a). Guidelines Section 2.1.1.

17 **V. STATEMENT OF REASONS FOR SELECTING PROFESSIONALS**

18 The Debtors have selected JOHNSON & GUBLER, P.C. for the reason that said professional
19 persons have had considerable experience in matters of this character and the scope of professional
20 services to be rendered, Mr. Johnson is Board Certified in Business Bankruptcy Law by The American
21 Board of Certification, and for the reasons that the Debtors believe that JOHNSON & GUBLER, P.C.
22 is well qualified to represent the Debtors as counsel in this proceeding, and that the employment of said
23 firm would be in the best interest of the estate. Matthew L. Johnson has been involved in business
24 bankruptcy cases for over 25 years in the District of Nevada. Bankruptcy Rule 2014(a).

25 **VI. STATEMENT RE: TERMS OF EMPLOYMENT AND PROPOSED ARRANGEMENT**

FOR COMPENSATION

1. Disclosure of amount and Source of Retainer or Advance Received (11 U.S.C. § 329(a), Bankruptcy Rules 2016(a) and 2016(b), Guidelines 2.2.1): Counsel received a retainer of \$75,000.00, plus an additional 5,214.00 for filing fees for each of the three (3) cases, for a total amount received of \$82,214.00. Of that amount, Johnson & Gubler, P.C. was paid pre-petition the following amounts: (1) \$10,422.50 for attorney's fees incurred for the preparation of the petitions and schedules, drafts of the employment applications and related documents, draft motion to consolidate, motion for use of cash collateral, negotiations with creditors in an attempt to work out these obligations to avoid the need to file a bankruptcy petition, meetings with the Debtors' representative, preparation of a Corporate Resolution, and other matters performed up to the time of filing; (2) \$15.00 for an incoming wire fee; and (3) \$5,214.00, which is the amount of the filing fees for each of the three (3) cases ($\$1,738.00 \times 3 = \$5,214.00$). The balance of the retainer (totaling \$66,562.50) received remains in trust and will be applied toward future billings. The retainer was paid by 21st Century Communities, Inc.

2. Terms and Conditions of Employment Agreement: 11 U.S.C. § 328(a) authorizes the Debtor, with Court approval, to employ said professional persons "on any reasonable terms and conditions of employment, including on retainer, an hourly basis, on a fixed or percentage fee basis, or a contingent fee basis." Applicant wished to retain said professional persons under a general retainer, at the hourly rates charged by said professional persons, due to the unknown length and extent of service performed by said professional persons for Applicant. 11 U.S.C. § 328(a). Bankruptcy Rule 2014(a).

3. Current Hourly Rates Charged by Professionals, and Other Charges (Guidelines Section 2.1.2.): the hourly rates to be charged by professional person expected to render services pursuant to this Application are as follows:

- a. Not exceeding \$450.00 per hour for attorneys; and
- b. Not exceeding \$150.00 per hour for paralegals.

Other charges that may be considered in an application for compensation include, but are not limited to:

- a. Messenger service;
- b. Postage and delivery;
- c. Process service and investigator charges;
- d. Copy charges;
- e. Computer research and word processing charges;
- f. Travel expenses;
- g. Miscellaneous expenses necessarily incurred in connection with the scope of services to be performed. Guidelines Section 2.1.2.

VII. STATEMENT RE: PAYMENTS MADE AND SHARING COMPENSATION

To the best knowledge of the Debtor, no payments have heretofore been made or promised to said professional persons for services rendered or to be rendered in any capacity whatsoever in connection with this case, and no agreement or understanding exists between said professional persons and any other entity for the sharing of compensation to be received for services rendered in connection with this case. Bankruptcy Rule 2016(a). Guidelines Sections 2.1.

VIII. STATEMENT RE: PREPETITION SERVICES (GUIDELINE SECTION 2.1.3)

Said professional persons were not retained for pre-petition services other than bankruptcy-related services and negotiating with creditors for an attempt to work out the Debtor's debts pre-petition. Guidelines Section 2.1.3.

IX. PROFESSIONAL DISCLOSURE (GUIDELINES SECTION 2.1.4)

This Application is accompanied by a Declaration/Verified Statement showing that the professional persons comply with the requirements of 11 U.S.C. §§ 327, 329 or 1103(b) and Bankruptcy Rules 2014, 2016 and 5002, and setting for the professional persons' connections with the Debtor, creditors and any other party in interest and their respective attorneys and accountants. To the

1 best of the Debtor's knowledge, said professional persons have no connections with the Debtor,
2 creditors or any other party in interest, their respective attorneys and accountants, which connection
3 may constitute a conflict of interest or adverse position with respect to the scope of the services to be
4 rendered by said professional persons in the above-captioned bankruptcy case. Furthermore, to the best
5 of Applicants' knowledge, the professional persons are not related to a bankruptcy judge or any
6 employee of the Office of the United States Trustee. Bankruptcy Rule 2014(1). Guidelines Section
7 2.1.4.

8 WHEREFORE, the Debtor respectfully requests that this Application be granted and approved,
9 and that the Debtor be authorized to employ and appoint JOHNSON & GUBLER, P.C. as Counsel
10 for the Debtor in the above-captioned bankruptcy case.

11 Dated: May 24, 2023.

12
13 /s/ Barry Cohen

14 Barry Cohen, President
15 21st CENTURY COMMUNITIES, INC.
and as Manager of FCT-MM, LLC and FCT-SM,
LLC

16 Submitted by:

17 JOHNSON & GUBLER, P.C.

18 /s/ Matthew L. Johnson

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